

1-1 By: Capelo (Senate Sponsor - Nelson) H.B. No. 3009  
1-2 (In the Senate - Received from the House May 19, 2003;  
1-3 May 20, 2003, read first time and referred to Committee on  
1-4 Administration; May 26, 2003, reported favorably by the following  
1-5 vote: Yeas 7, Nays 0; May 26, 2003, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to certain advance directives for medical treatment and  
1-9 medical treatment decisions.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 166.002, Health and Safety Code, is  
1-12 amended by amending Subdivision (7) and adding Subdivision (15) to  
1-13 read as follows:

1-14 (7) "Health care or treatment decision" means consent,  
1-15 refusal to consent, or withdrawal of consent to health care,  
1-16 treatment, service, or a procedure to maintain, diagnose, or treat  
1-17 an individual's physical or mental condition, including such a  
1-18 decision on behalf of a minor.

1-19 (15) "Cardiopulmonary resuscitation" means any  
1-20 medical intervention used to restore circulatory or respiratory  
1-21 function that has ceased.

1-22 SECTION 2. Subchapter A, Chapter 166, Health and Safety  
1-23 Code, is amended by adding Section 166.010 to read as follows:

1-24 Sec. 166.010. APPLICABILITY OF FEDERAL LAW RELATING TO  
1-25 CHILD ABUSE AND NEGLECT. This chapter is subject to applicable  
1-26 federal law and regulations relating to child abuse and neglect to  
1-27 the extent applicable to the state based on its receipt of federal  
1-28 funds.

1-29 SECTION 3. Section 166.044, Health and Safety Code, is  
1-30 amended by adding Subsection (e) to read as follows:

1-31 (e) A physician, nurse, or other person acting under the  
1-32 direction of a physician who participates in the withholding or  
1-33 withdrawal of cardiopulmonary resuscitation from a patient who, in  
1-34 reasonable medical judgment, has a terminal or irreversible  
1-35 condition is not civilly or criminally liable for failure to  
1-36 provide resuscitation if, in reasonable medical judgment, in the  
1-37 event of cardiopulmonary arrest, the patient's death would occur  
1-38 within minutes to hours regardless of the provision of  
1-39 resuscitation. Nothing in this section may be construed to limit  
1-40 the authority of a physician, nurse, or other person to comply with  
1-41 an otherwise valid and applicable patient's directive to physicians  
1-42 or out-of-hospital do-not-resuscitate order, or the decision of a  
1-43 competent patient or the person responsible for the health care  
1-44 decisions of the patient, that authorizes a do-not-resuscitate  
1-45 order under other circumstances.

1-46 SECTION 4. The heading to Section 166.046, Health and  
1-47 Safety Code, is amended to read as follows:

1-48 Sec. 166.046. PROCEDURE IF NOT EFFECTUATING A DIRECTIVE OR  
1-49 TREATMENT DECISION.

1-50 SECTION 5. Section 166.046, Health And Safety Code, is  
1-51 amended by amending Subsections (a), (b), and (e) and adding  
1-52 Subsection (e-1) to read as follows:

1-53 (a) If an attending physician refuses to honor a patient's  
1-54 advance directive or a health care or treatment decision made by or  
1-55 on behalf of a patient [~~under Section 166.039~~], the physician's  
1-56 refusal shall be reviewed by an ethics or medical committee. The  
1-57 attending physician may not be a member of that committee. The  
1-58 patient shall be given life-sustaining treatment during the review.

1-59 (b) The patient or the person responsible for the health  
1-60 care decisions of the individual who has made the decision  
1-61 regarding the directive or treatment decision:

1-62 (1) shall be informed of the committee review process  
1-63 not less than 48 hours before the meeting called to discuss the  
1-64 patient's directive, unless the time period is waived by mutual

2-1 agreement; ~~and~~  
 2-2 (2) at the time of being so informed, shall be  
 2-3 provided:  
 2-4 (A) a copy of the appropriate statement set forth  
 2-5 in Section 166.052; and  
 2-6 (B) a copy of the registry list of health care  
 2-7 providers and referral groups that have volunteered their readiness  
 2-8 to consider accepting transfer or to assist in locating a provider  
 2-9 willing to accept transfer that is posted on the website maintained  
 2-10 by the Texas Health Care Information Council under Section 166.053;  
 2-11 and  
 2-12 (3) is entitled to:  
 2-13 (A) attend the meeting; and  
 2-14 (B) receive a written explanation of the decision  
 2-15 reached during the review process.  
 2-16 (e) If the patient or the person responsible for the health  
 2-17 care decisions of the patient is requesting life-sustaining  
 2-18 treatment that the attending physician has decided and the review  
 2-19 process has affirmed ~~have decided~~ is inappropriate treatment, the  
 2-20 patient shall be given available life-sustaining treatment pending  
 2-21 transfer under Subsection (d). The patient is responsible for any  
 2-22 costs incurred in transferring the patient to another facility.  
 2-23 The physician and the health care facility are not obligated to  
 2-24 provide life-sustaining treatment after the 10th day after the  
 2-25 written decision required under Subsection (b) is provided to the  
 2-26 patient or the person responsible for the health care decisions of  
 2-27 the patient unless ordered to do so under Subsection (g).  
 2-28 (e-1) If during a previous admission to a facility a  
 2-29 patient's attending physician and the review process under  
 2-30 Subsection (b) have determined that life-sustaining treatment is  
 2-31 inappropriate, and the patient is readmitted to the same facility  
 2-32 within six months from the date of the decision reached during the  
 2-33 review process conducted upon the previous admission, Subsections  
 2-34 (b) through (e) need not be followed if the patient's attending  
 2-35 physician and a consulting physician who is a member of the ethics  
 2-36 or medical committee of the facility document on the patient's  
 2-37 readmission that the patient's condition either has not improved or  
 2-38 has deteriorated since the review process was conducted.  
 2-39 SECTION 6. Subchapter B, Chapter 166, Health and Safety  
 2-40 Code, is amended by adding Sections 166.052 and 166.053 to read as  
 2-41 follows:  
 2-42 Sec. 166.052. STATEMENTS EXPLAINING PATIENT'S RIGHT TO  
 2-43 TRANSFER. (a) In cases in which the attending physician refuses  
 2-44 to honor an advance directive or treatment decision requesting the  
 2-45 provision of life-sustaining treatment, the statement required by  
 2-46 Section 166.046(b)(2)(A) shall be in substantially the following  
 2-47 form:  
 2-48 When There Is A Disagreement About Medical Treatment: The Physician  
 2-49 Recommends Against Life-Sustaining Treatment That You Wish To  
 2-50 Continue  
 2-51 You have been given this information because you have  
 2-52 requested life-sustaining treatment,\* which the attending  
 2-53 physician believes is not appropriate. This information is being  
 2-54 provided to help you understand state law, your rights, and the  
 2-55 resources available to you in such circumstances. It outlines the  
 2-56 process for resolving disagreements about treatment among  
 2-57 patients, families, and physicians. It is based upon Section  
 2-58 166.046 of the Texas Advance Directives Act, codified in Chapter  
 2-59 166 of the Texas Health and Safety Code.  
 2-60 When an attending physician refuses to comply with an advance  
 2-61 directive or other request for life-sustaining treatment because of  
 2-62 the physician's judgment that the treatment would be inappropriate,  
 2-63 he or she will request that the case be reviewed by an ethics or  
 2-64 medical committee. Life-sustaining treatment will be provided  
 2-65 through the review.  
 2-66 You will receive notification of this review at least 48  
 2-67 hours before a meeting of the committee related to your case. You  
 2-68 are entitled to attend the meeting. With your agreement, the  
 2-69 meeting may be held sooner than 48 hours, if possible.

3-1 If you wish, you are entitled to receive a written  
 3-2 explanation of the decision reached during the review process.

3-3 If after this review process both the attending physician and  
 3-4 the ethics or medical committee conclude that life-sustaining  
 3-5 treatment is inappropriate and yet you continue to request such  
 3-6 treatment, then the following procedure will occur:

3-7 1. The physician, with the help of the health care facility,  
 3-8 will assist you in trying to find a physician and facility willing  
 3-9 to provide the requested treatment.

3-10 2. You are being given a list of health care providers and  
 3-11 referral groups that have volunteered their readiness to consider  
 3-12 accepting transfer, or to assist in locating a provider willing to  
 3-13 accept transfer, maintained by the Texas Health Care Information  
 3-14 Council. You may wish to contact providers or referral groups on  
 3-15 the list or others of your choice to get help in arranging a  
 3-16 transfer.

3-17 3. The patient will continue to be given the requested  
 3-18 life-sustaining treatment until he or she can be transferred to a  
 3-19 willing provider for up to 10 days from the time you were given the  
 3-20 committee's written decision that life-sustaining treatment is not  
 3-21 appropriate.

3-22 4. If a transfer can be arranged, the patient will be  
 3-23 responsible for the costs of the transfer.

3-24 5. If a provider cannot be found willing to give the  
 3-25 requested treatment within 10 days, life-sustaining treatment may  
 3-26 be withdrawn on the 11th day unless a court of law has granted an  
 3-27 extension.

3-28 6. You may ask the appropriate district or county court to  
 3-29 extend the 10-day period if the court finds that there is a  
 3-30 reasonable expectation that a physician or health care facility  
 3-31 willing to provide life-sustaining treatment will be found if the  
 3-32 extension is granted. You will probably need a lawyer's help if you  
 3-33 wish to consider seeking this type of extension.

3-34 \* "Life-sustaining treatment" means treatment that, based on  
 3-35 reasonable medical judgment, sustains the life of a patient and  
 3-36 without which the patient will die. The term includes both  
 3-37 life-sustaining medications and artificial life support, such as  
 3-38 mechanical breathing machines, kidney dialysis treatment, and  
 3-39 artificial nutrition and hydration. The term does not include the  
 3-40 administration of pain management medication or the performance of  
 3-41 a medical procedure considered to be necessary to provide comfort  
 3-42 care, or any other medical care provided to alleviate a patient's  
 3-43 pain.

3-44 (b) In cases in which the attending physician refuses to  
 3-45 comply with an advance directive or treatment decision requesting  
 3-46 the withholding or withdrawal of life-sustaining treatment, the  
 3-47 statement required by Section 166.046(b)(2)(A) shall be in  
 3-48 substantially the following form:

3-49 When There Is A Disagreement About Medical Treatment: The Physician  
 3-50 Recommends Life-Sustaining Treatment That You Wish To Stop

3-51 You have been given this information because you have  
 3-52 requested the withdrawal or withholding of life-sustaining  
 3-53 treatment\* and the attending physician refuses to comply with that  
 3-54 request. The information is being provided to help you understand  
 3-55 state law, your rights, and the resources available to you in such  
 3-56 circumstances. It outlines the process for resolving disagreements  
 3-57 about treatment among patients, families, and physicians. It is  
 3-58 based upon Section 166.046 of the Texas Advance Directives Act,  
 3-59 codified in Chapter 166 of the Texas Health and Safety Code.

3-60 When an attending physician refuses to comply with an advance  
 3-61 directive or other request for withdrawal or withholding of  
 3-62 life-sustaining treatment for any reason, he or she will request  
 3-63 that the case be reviewed by an ethics or medical committee.  
 3-64 Life-sustaining treatment will be provided through the review.

3-65 You will receive notification of this review at least 48  
 3-66 hours before a meeting of the committee related to your case. You  
 3-67 are entitled to attend the meeting. With your agreement, the  
 3-68 meeting may be held sooner than 48 hours, if possible.

3-69 If you wish, you are entitled to receive a written

4-1 explanation of the decision reached during the review process.

4-2 If you or the attending physician do not agree with the  
 4-3 decision reached during the review process, and the attending  
 4-4 physician still refuses to comply with your request to withhold or  
 4-5 withdraw life-sustaining treatment, then the following procedure  
 4-6 will occur:

4-7 1. The physician, with the help of the health care facility,  
 4-8 will assist you in trying to find a physician and facility willing  
 4-9 to withdraw or withhold the life-sustaining treatment.

4-10 2. You are being given a list of health care providers and  
 4-11 referral groups that have volunteered their readiness to consider  
 4-12 accepting transfer, or to assist in locating a provider willing to  
 4-13 accept transfer, maintained by the Texas Health Care Information  
 4-14 Council. You may wish to contact providers or referral groups on  
 4-15 the list or others of your choice to get help in arranging a  
 4-16 transfer.

4-17 \* "Life-sustaining treatment" means treatment that, based on  
 4-18 reasonable medical judgment, sustains the life of a patient and  
 4-19 without which the patient will die. The term includes both  
 4-20 life-sustaining medications and artificial life support, such as  
 4-21 mechanical breathing machines, kidney dialysis treatment, and  
 4-22 artificial nutrition and hydration. The term does not include the  
 4-23 administration of pain management medication or the performance of  
 4-24 a medical procedure considered to be necessary to provide comfort  
 4-25 care, or any other medical care provided to alleviate a patient's  
 4-26 pain.

4-27 (c) An attending physician or health care facility may, if  
 4-28 it chooses, include any additional information concerning the  
 4-29 physician's or facility's policy, perspective, experience, or  
 4-30 review procedure.

4-31 Sec. 166.053. REGISTRY TO ASSIST TRANSFERS. (a) The Texas  
 4-32 Health Care Information Council shall maintain a registry listing  
 4-33 the identity of and contact information for health care providers  
 4-34 and referral groups, situated inside and outside this state, that  
 4-35 have voluntarily notified the council they may consider accepting  
 4-36 or may assist in locating a provider willing to accept transfer of a  
 4-37 patient under Section 166.045 or 166.046.

4-38 (b) The listing of a provider or referral group in the  
 4-39 registry described in this section does not obligate the provider  
 4-40 or group to accept transfer of or provide services to any particular  
 4-41 patient.

4-42 (c) The Texas Health Care Information Council shall post the  
 4-43 current registry list on its website in a form appropriate for easy  
 4-44 comprehension by patients and persons responsible for the health  
 4-45 care decisions of patients and shall provide a clearly identifiable  
 4-46 link from its home page to the registry page. The list shall  
 4-47 separately indicate those providers and groups that have indicated  
 4-48 their interest in assisting the transfer of:

4-49 (1) those patients on whose behalf life-sustaining  
 4-50 treatment is being sought;

4-51 (2) those patients on whose behalf the withholding or  
 4-52 withdrawal of life-sustaining treatment is being sought; and

4-53 (3) patients described in both Subdivisions (1) and  
 4-54 (2).

4-55 (d) The registry list described in this section shall  
 4-56 include the following disclaimer:

4-57 "This registry lists providers and groups  
 4-58 that have indicated to the Texas Health Care  
 4-59 Information Council their interest in  
 4-60 assisting the transfer of patients in the  
 4-61 circumstances described, and is provided  
 4-62 for information purposes only. Neither the  
 4-63 Texas Health Care Information Council nor  
 4-64 the State of Texas endorses or assumes any  
 4-65 responsibility for any representation,  
 4-66 claim, or act of the listed providers or  
 4-67 groups."

4-68 SECTION 7. Subchapter C, Chapter 166, Health and Safety  
 4-69 Code, is amended by adding Section 166.102 to read as follows:

5-1 Sec. 166.102. PHYSICIAN'S DNR ORDER MAY BE HONORED BY  
5-2 HEALTH CARE PERSONNEL OTHER THAN EMERGENCY MEDICAL SERVICES  
5-3 PERSONNEL. (a) Except as provided by Subsection (b), a licensed  
5-4 nurse or person providing health care services in an  
5-5 out-of-hospital setting may honor a physician's do-not-resuscitate  
5-6 order.

5-7 (b) When responding to a call for assistance, emergency  
5-8 medical services personnel shall honor only a properly executed or  
5-9 issued out-of-hospital DNR order or prescribed DNR identification  
5-10 device in accordance with this subchapter.

5-11 SECTION 8. Section 166.081(1), Health and Safety Code, is  
5-12 repealed.

5-13 SECTION 9. This Act takes effect immediately if it receives  
5-14 a vote of two-thirds of all the members elected to each house, as  
5-15 provided by Section 39, Article III, Texas Constitution. If this  
5-16 Act does not receive the vote necessary for immediate effect, this  
5-17 Act takes effect September 1, 2003.

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